

IN THE SUPREME COURT OF THE STATE OF NEVADA

LINDA FALLICA,
Appellant,
vs.
MIRAGE CASINO-HOTEL,
Respondent.

No. 39000

FILED

JUN 03 2003

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

This is an appeal from a district court order, affirming an appeals officer's decision that appellant Linda Fallica was entitled to temporary total disability (TTD) benefits for only the period from when her doctor initially gave her off-work slips until the doctor released her to modified duty. Fallica's benefits ceased because she failed to interview for positions that would accommodate her restrictions and was, thus, terminated.

"This court's role in reviewing an administrative decision is identical to that of the district court: to review the evidence presented to the agency in order to determine whether the agency's decision was arbitrary or capricious and was thus an abuse of the agency's discretion."¹ In making our determination, we are limited to the record below.² "The central inquiry is whether substantial evidence supports the agency's

¹United Exposition Service Co. v. SIIS, 109 Nev. 421, 423, 851 P.2d 423, 424 (1993) (citing Titanium Metals Corp. v. Clark County, 99 Nev. 397, 399, 663 P.2d 355, 357 (1983)); NRS 233B.135(3)(f).

²Id. at 424, 851 P.2d at 424 (citing State, Emp. Sec. Dep't v. Weber, 100 Nev. 121, 124, 676 P.2d 1318, 1320 (1984)); NRS 233B.135(3)(e).

decision.”³ “Substantial evidence is that which a reasonable mind might accept as adequate to support a conclusion.”⁴

NRS 616C.475 provides that employees are entitled to receive compensation when “injured by accident arising out of and in the course of employment” which results in a period of temporary total disability.⁵ The appeals officer concluded that Fallica was entitled to receive TTD benefits from the time Dr. Williams took her off work until she was released to modified work. There is substantial evidence in the record to support the appeals officer’s conclusion that Fallica was entitled to TTD benefits during this time period.

The appeals officer further concluded that Fallica’s TTD benefits should end at the time she was released to modified employment by Dr. Williams and she began a job search, but refused to even interview for potential positions. The appeals officer’s determination is governed by NRS 616C.475(5), which provides in part:

Payments for a temporary total disability must cease when:

- (a) A physician or chiropractor determines that the employee is physically capable of any gainful employment for which the employee is suited, after giving consideration to the employee’s education, training and experience;

³Id. (citing Desert Inn Casino & Hotel v. Moran, 106 Nev. 334, 336, 792 P.2d 400, 401 (1990)); NRS 233B.135(3)(e).

⁴Id. at 424, 851 P.2d at 424-25 (citing State, Emp. Security v. Hilton Hotels, 102 Nev. 606, 608, 729 P.2d 497, 498 (1986)).

⁵See NRS 616C.475(1).

(b) The employer offers the employee light-duty employment or employment that is modified according to the limitations or restrictions imposed by a physician or chiropractor

The appeals officer found that after Fallica was released to light-duty work, she was “informed of various positions that would accommodate her medical restrictions, but she failed to even interview for the positions.” Fallica’s own testimony and the testimony of the Mirage employee relations representative, Ms. Marge Minnie, supports these findings. Therefore, the appeals officer correctly concluded that Fallica’s TTD benefits should cease after Fallica was returned to light-duty work, but refused to interview for available positions that would accommodate her limitations. Moreover, the appeals officer correctly concluded that once Fallica’s employment with the Mirage was terminated because she had exhausted all available leave and had refused to attend interviews, she was ineligible for further TTD benefits.

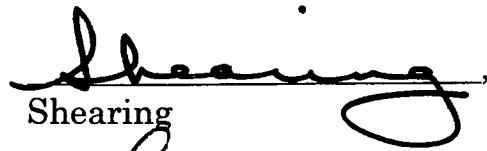
Fallica also argues that the appeals officer’s decision is legally erroneous because it fails to address vocational rehabilitation benefits. Fallica, however, did not raise this issue prior to this appeal. Fallica’s request for a hearing before the hearing officer, and later the appeals officer, indicated “temporary total disability,” and not “vocational rehabilitation” as the issue in question. Fallica did not raise the issue of vocational rehabilitation services to the district court, the appeals officer, a hearing officer, or even the Mirage.

NRS 616C.360(2) provides, “The appeals officer must hear any matter raised before him on its merits, including new evidence bearing on the matter.” NRS 616C.345(1) allows a “party aggrieved by a decision of the hearing officer relating to a claim for compensation” to appeal to an

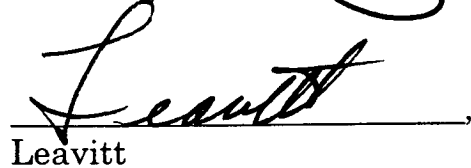
appeals officer. This statute indicates that before an appeal can be made, the party must first be "aggrieved by a decision."⁶

In the present case, the record does not indicate that Fallica has been aggrieved by a prior decision on the issue of vocational rehabilitation. Moreover, there is nothing in the record submitted to this court to indicate the appeals officer failed to hear a matter raised before her. Therefore, we do not address the issue of vocational rehabilitation. Accordingly, we

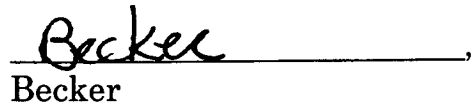
ORDER the judgment of the district court AFFIRMED.

 J.

Shearing

 J.

Leavitt

 J.

Becker

cc: Hon. Valorie Vega, District Judge
Robert G. Giunta
David H. Benavidez
Clark County Clerk

⁶See NRS 616C.345(1).